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**ATTORNEYS FOR Defendants**  
BioFuels of Colorado, LLC,  
Thomas A. Davanzo, and Robert Fedyna

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

SOLVERDI WORLDWIDE, LTD., an  
Australian public company; SOLVERDI, LLC,  
a Delaware limited liability company; and  
WHITE MOUNTAIN GROUP, LLC,  
a Delaware limited liability company,

Plaintiffs,

v.

BIOFUELS OF COLORADO, LLC, a  
Colorado corporation;  
THOMAS A. DAVANZO, an individual;  
ROBERT FEDYNA, an individual;  
Investors Does 1-10; and Customers Does 1-  
10,

Defendants.

: HON. DICKINSON R. DEBEVOISE  
: Civil Action No. 09-5060 (DRD)(MAS)

: **AFFIDAVIT OF**  
: **THOMAS A. DAVANZO**

: (Document Electronically Filed)

STATE OF COLORADO )  
 ) ss:  
COUNTY OF DENVER )

**THOMAS A. DAVANZO**, of full age, being duly sworn according to law, upon his oath, deposes and says:

1. I am the President of BioFuels of Colorado, LLC ("BioFuels").
2. BioFuels produces and sells heating oil and biofuels.
3. BioFuels leases a facility (the "Facility") in Essex County, New Jersey, at which BioFuels conducts its business.
4. BioFuels leased the equipment referred to in Plaintiffs' Complaint in this lawsuit as the "Transformer." BioFuels leased the Transformer with the intent of producing and selling heating oils at the Facility, and it has installed the Transformer at the Facility.
5. On September 24, 2009, Plaintiffs obtained a temporary restraining order ("TRO") enjoining and restraining BioFuels from using, dismantling, or moving the Transformer.
6. After this case was removed to this Court, BioFuels initially consented to a conditional continuation of the TRO in order to facilitate a settlement of the parties' disputes.
7. Settlement discussions have gone on for several weeks but have not resulted in meaningful progress. Meanwhile, BioFuels' compliance with the TRO has caused BioFuels to incur significant financial losses, losses which are expected to continue and increase as long as the TRO is in place. Therefore, BioFuels no longer consents to the TRO in its current open-ended and unsecured form.
8. The TRO prevents BioFuels from making productive business use of the Facility and thereby causes BioFuels to both incur costs associated with the Facility and to forgo income associated with the Facility. Specifically, the Transformer occupies a significant amount of space in the Facility and the TRO prevents BioFuels from using the Transformer to produce fuels and prevents BioFuels from moving the Transformer in order to operate in the Facility using other

equipment.

9. Based on production rates of similar equipment, BioFuels estimates that but for the TRO it could and would produce approximately 500,000 gallons of fuel per month with the Transformer at the Facility. Based on the costs of raw materials, the conversion rate of raw materials to fuel, and a \$1 per gallon federal subsidy, BioFuels would expect to realize approximately \$.50 per gallon in net profit. Therefore, if the TRO is left in place, BioFuels estimates that it will be prevented from realizing approximately \$3 million in net profits on an annual basis.

10. In addition to the loss of profits, each month BioFuels must pay rent and associated expenses for the Facility. These monthly expenses are as follows:

Rent	\$6,413.85
Taxes	\$2,037.59
Common area maintenance	\$308.43
Insurance	\$168.13
<b>Monthly Total:</b>	<b>\$8,927.87</b>

11. BioFuels must also pay a \$10,000 annual premium for multi-peril insurance for the Facility.

12. Before the TRO was entered, BioFuels also incurred and was unable to recapture the following expenses to install the Transformer in the Facility:

Installation of equipment	\$110,000
Installation of electrical	\$70,000
Additional piping, stands, etc.	\$25,000
<b>Total</b>	<b>\$205,000</b>

13. BioFuels pays \$300,000 annually in salaries and a significant portion of these salaries was intended to be paid in exchange for work relating to operations at the Facility.

  
THOMAS A. DAVANZO

Sworn and subscribed to before me  
this 25<sup>th</sup> day of November, 2009.

